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**SEP 06 2006**

**OFFICE OF PETITIONS**

|                              |   |                        |
|------------------------------|---|------------------------|
| In re Application of         | : |                        |
| Jerry E. Mann                | : |                        |
| Application No. 08/843,162   | : | DECISION ON PETITION   |
| Filed: April 11, 1997        | : | UNDER 37 C.F.R. §1.181 |
| Attorney Docket No.: 515-001 | : |                        |
| Title: APPARATUS FOR A       | : |                        |
| RECLINING AND RECTRACTABLE   | : |                        |
| SLING SEAT FOR USE WITH A    | : |                        |
| PORTABLE HUNTING TREE STAND  | : |                        |

This is a decision on the petition filed on June 12, 2006, pursuant to 37 C.F.R. §1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed March 18, 2005, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on June 19, 2005. A notice of abandonment was mailed on October 28, 2005.

RELEVANT PORTION OF THE C.F.R.

37 C.F.R. §1.8(b) sets forth, *in toto*:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the

proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

### ANALYSIS

37 C.F.R. §1.181(f) sets forth that any petition submitted under Rule §1.181 that is not "filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely." It is noted that the present petition was not filed until more than seven months had passed since the mailing of the notice of abandonment. Petitioner is reminded that delays such as occurred can result in loss of rights and care must be taken to avoid such.

With the present petition, Petitioner has asserted that both an amendment and a petition for a three-month extension of time were filed on September 19, 2005<sup>1</sup>. Petitioner has submitted a copy of this submission, and it is noted that it contains a certificate of mailing dated September 19, 2005.

Certificate of mailing practice provides a mechanism by which Applicants may evince that a paper was timely submitted to the Office, in the event that the correspondence is not received. Petitioner has further included a copy of his postcard receipt, which contains a date stamp of November 3, 2005.

Petitioner's submission has been reviewed: with the present petition, Petitioner has informed the Office of the previous submission, provided an additional copy of the previous mailing, and has included a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely transmission.

It is further noted that Office records reflect that the \$510 fee associated with the filing of a petition for a three-month extension of time was received in the Office on November 3,

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<sup>1</sup> It is noted that September 18, 2005 fell on a Sunday.

2005. Moreover, the electronic file has been reviewed - a copy of this submission has been located, and this submission was received in the Office on November 3, 2005.

Petitioner has requested that the holding of abandonment in the above-identified application be withdrawn. It is clear that a response was timely submitted. Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that petitioner has met his burden of establishing that a submission was timely submitted.

Accordingly, the petition under 37 C.F.R. §1.181(a) is **GRANTED**. The holding of abandonment is **WITHDRAWN**.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the amendment which was received on November 3, 2005 can be processed.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225<sup>2</sup>. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



**Paul Shanowski**  
**Senior Attorney**  
**Office of Petitions**  
**United States Patent and Trademark Office**

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<sup>2</sup> Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).